"But it was not meant by this that the legal presumption of a grant could be rebutted or overcome by proof that the owner of the fee—the servient estate—had no actual knowledge of the claim to an easement, and did not expressly acquiesce in the dominant use. It was only intended that the presumption could be rebutted by showing that the use was by express permission, or that the owner of the servient estate was under a legal disability, and could not, therefore, give consent or legal acquiescence, or, in other words, by the interposition of any of the excusatory pleas that are open to a plaintiff in ejectment against a plea by the defendant of the statute of limitations. So that although, technically, the statute of limitations does not apply to an easement, still by judicial interpretation the result is the same as if the statute did so apply. Under the first contention the plaintiff asserts the subcontention that the burden is upon the defendant to show that such exercise of such an easement was with the knowledge and acquiescence of the owner, and that in this case, so far from the defendant so proving, it appears that Mary E. Boyce did not know that the tracks were on the land until 1890, and John O'Fallon Delaney did not know that fact until 1895. Theoretically the use and easement are with the knowledge and acquiescence of the owner as much as is the adverse possession of a defendant in ejectment. For the law presumes that every man knows the condition and status of his land, and if anyone ousts him, or trespasses upon his land, or enters into possession and sets up an adverse claim thereto, and the owner does not ask legal aid to dispossess him within the time limited for bringing such actions, the law assumes that the owner has acquiesced in the adverse claim. That is, the statute of limitations sets at rest all such questions unless they are properly presented for adjudication within the statutory period of limitation. In point of fact, the owner, like these owners, may have had no actual knowledge, and therefore did not expressly acquiesce; but the law implies knowledge, and therefore consent. This is as true of claims to easements as it is to claims to the land itself. 10 Am. & Eng. Enc. Law, p. 426."

STREET RAILWAYS—PRINCIPAL AND AGENT—ASSAULT BY AGENT—SCOPE OF AUTHORITY.—The plaintiff while a passenger on defendant's street car, and in a state of intoxication, grossly insulted the motorman. After reaching his destination, the plaintiff alighted from the car, deposited his bundles on the sidewalk, and returning to the car, got into an altercation with the motorman. The motorman descended from the car and struck him over the head with an iron lever used for controlling the car. *Held*, that the assault was not within the scope of the motorman's employment, and the defendant company was not liable for damages for the injury.—*Palmer* v. *Winston &c. Co.* (N. C.), 42 S. E. 604 (Nov., 1902).

The decision seems based on sound principles. The opinion by Clark, J., is brief but luminous. On this point the court says:

"The only question which remains is as to the liability of the defendant for the assault upon the plaintiff. If the plaintiff had been a passenger, or his passage had not been fully terminated, or if, when he left the car at his destination, the employe had immediately followed the passenger up and assaulted him, the defendant concedes that there would be no question as to the liability of the company. *Daniel* v. *Railroad Co.*, 117 N. C. 592, 23 S. E. 327; *Williams* v. *Gill*, 122 N. C. 967, 29 S. E. 879; *Strother* v. *Railroad Co.*, 123 N. C. 197, 31 S. E. 386.

"Here the passage had terminated, for the passenger had deposited his bundle and then returned to the car. *Railway Co.* v. *Peacock* (Md.), 14 Atl. 709, 9 Am. St. Rep. 425; *Railroad Co.* v. *Boddy* (Tenn.), 58 S. W. 646, 51 L. R. A. 885; *Creamer* v. *Railroad Co.* (Mass.), 31 N. E. 391, 16 L. R. A. 490, 32 Am. St. Rep. 456; *Railway Co.* v. *Bates*, 103 Ga. 333, 30 S. E. 41.

"But the plaintiff insists, however, that the defendant is liable, notwithstanding, if the motorman assaulted the plaintiff while acting in the scope of his employment. The court so charged, and the exception is that the evidence as above stated did not justify submitting that matter to the jury.

"In *Pierce* v. *Railroad Co.*, 124 N. C. 83, 32 S. E. 399, 44 L. R. A. 316, the fireman threw a lump of coal at a boy stealing a ride on the tender of a switching engine, in violation of a town ordinance, knocking him from the engine or frightening him so that he fell and was run over and killed by the engine, which was running backwards.

"In *Cook* v. *Railway Co.*, 128 N. C. 333, 38 S. E. 925, a tramp was stealing a ride under a car. A flagman and a brakeman threw rocks at him, striking the rod under him, frightening him and causing him to get off while the car was in motion, whereby his foot was caught and he was badly hurt.

"In *Brendle* v. *Spencer*, 125 N. C. 474, 34 S. E. 634, the plaintiff was watering his team at a stream; and the engineer on a train passing on a bridge above wantonly blew his whistle for the purpose of frightening the plaintiff's horses, which ran away, throwing the plaintiff out of his wagon and injuring him.

"In none of these cases was the plaintiff a passenger, and in the first two he was a trespasser, and in all three the company was held responsible. But this was because the servant of the company was 'acting in the scope of his employment' (i. e., on duty as servant) when the tort was committed. But here the plaintiff was neither a passenger, nor was the employe acting within the scope of his employment. The court should have told the jury that, taking the evidence most strongly for the plaintiff, they should answer the first issue, 'No.'

"The employe in this case had left the car, and was not engaged in any work or employment for the company at the time of the assault. He had, for the time being, abandoned his post, and was not doing service for the company, as in each of the three cases last cited. The assault was not made while the motorman was in the line or in the discharge of his duty. 20 Am. & Eng. Enc. Law 168, note 1; Id. 169; 1 Thomp. Neg. secs. 525, 526. If the plaintiff's contract of passage had not terminated, and the plaintiff had been assaulted, while on the car or upon leaving it, by an employe, then the company would be liable, whether the employe was acting within the scope of his employment at the time or not; for, as was said in *Cook* v. *Railway Co.*, 128 N. C., at page 336, 38 S. E. 925, it can never be in the scope of an employe's service to assault any one wrongfully. '"Acting within the general scope of his employment" means while on duty.' Id. This is the limitation upon the liability of the company for torts of its employees towards those not passengers or under the protection of the contract of safe carriage at the time of the tort. The law can hardly be better summed up than in the following extract from the brief of the learned counsel for the defendant: 'To render the defendant liable, (1) the plaintiff must have been a passenger on defendant's car at the time he was stricken, or still within the sphere of its protection; or (2) the employe must have been acting at the time within the scope of his employment on defendant's car.'"

In *C. & O. R. Co.* v. *Anderson*, 93 Va. 650, it was held that a railroad company was not responsible for the act of the brakeman in throwing a trespasser from the train, in the absence of proof of authority to eject trespassers, or of a custom for brakemen so to do, known to the company. This case is out of line with a number of cases cited in the principal case, and with the principle applicable in such cases. See criticism in 5 Va. Law Reg. 330.